IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.23 OF 1997

The Commissioner of Income-tax,
Kolhapur .. Applicant.
V/s.
Shree Vithal SSK Ltd., Gursale .. Respondent.

Mr.A.S. Rao with Mr.Pankaj Kapoor for the applicant.

Mr.S.N. Inamdar with Mr.P. Vaidya for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 19TH APRIL, 2005.

P.C. :

1. Heard the learned counsel for the parties. The Tribunal has referred as many as 15 questions for the opinion of this Court. First 12 questions are nothing but various shades of Question No.13 referred to for our opinion. Therefore, answer to Question No.13 if given then question Nos.1 to 12 need not be answered by this Court, becuase answer to Question No.13 takes care of Question Nos.1 to 12. Question Nos.13, 14 and 15 reads as under :

> 13. Whether on the facts and in the circumstances of the case, the Tribunal was justified in treating the non-refundable and refundable deposits as loans, and not as income ?
>
> 14. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding, in respect of various funds like Chief Minister's Fund, Hutment Fund, Small Savings Scheme, Y.B. Chavan Memorial Fund etc. that the assessee acted as an agent and collections were made

as per the directions of the State Government. For spending them on the purposes specified by the State Government and that the collections were made by way of retaining amount of cane pricepayable to the sugarcane growers and hence are not trading receipt liable to tax ?

15. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in not following the Madhya Pradesh High Court's decision in the case of Jiwajeerao Sugar Co-operative Ltd. V/s. C.I.T. (176 ITR 182) in respect of the Area Development Fund and Cane Development Fund ?

Additional Question :

1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that interest on non-refundable deposits is allowable deduction ?

2. Whether on the facts and circumstances of the case, the Tribunal was right in disallowing a sum of Rs.50,000/- paid by the assessee society towards Education Fund under the provision of Sec.68 of the Maharashtra Co-operative Societies Act, 1960 holding the same as not connected to the business of the assessee society ?

2. As regards Question no.13 is concerned, the same is answered on the touchstone of the judgment of the Apex Court in the case of **Siddheshwar S.S.K. Ltd. V/s. CIT [(2004) 270 ITR 1 (SC)** in the affirmative. Similarly, Question No.14 will have to be answered on the touchstone of the judgment of the Apex Court in the case of Siddheshwar S.S.K. Ltd. (supra) in the affirmative.

3. So far as Question no.15 is concerned, the Apex Court in the case of Siddheshwar S.S.K. Ltd.

(supra) has left the said question open. In this view of the matter, we remand this matter back to the Tribunal with respect to Question No.15 with direction to the Tribunal to consider the issue relating to the Area Development Fund and Cane Development Fund in the light of the judgment of the Apex Court in the case of Siddheshwar S.S.K. Ltd. (supra).

4. As regards the additional question the Assessing Officer while assessment shall pass an appropriate order even in resepct of this question lconsiderting the judgment of the Apex Court in the case of Siddheshwar SSK Limited (supra). With respect to additional question No.2, the issue is squarely covered in favour of the assessee and against the revenue in view of the judgment of the Division Bench of this court in the case of **Krishna SSK Ltd. V/s. CIT [229 ITR 577 (Bom)]**.

5. The reference accordingly stands disposed of with no order as to costs.

****